

## **SUBCHAPTER F : ABOVEGROUND STORAGE TANKS**

### **§334.121. Purpose and Applicability for ASTs.**

(a) Purpose. The purpose of this subchapter is to provide a regulatory program for aboveground storage tanks storing petroleum products, as prescribed by the Texas Water Code, Chapter 26, Subchapter I, to maintain and protect the quality of groundwater and surface water resources in the state from certain substances in aboveground storage tanks that may pollute such groundwater and surface water resources, and to provide for the protection of human health and safety, as well as the protection of the overall environment of the state.

(b) Applicability.

(1) An aboveground storage tank shall be subject to the regulations in this subchapter only when such tank:

(A) meets the definition of "aboveground storage tank" in §334.122 of this title (relating to Definitions for ASTs);

(B) contains, has contained, or will contain a "petroleum product" as defined in §334.122 of this title (relating to Definitions for ASTs);

(C) is not exempted from regulation in §334.123 of this title (relating to Statutory Exemptions for ASTs); and

(D) is not excluded from regulation in §334.124 of this title (relating to Commission Exclusions for ASTs).

(2) The requirements and provisions in this subchapter shall apply to regulated aboveground storage tanks, and to the registration, installation notification, reporting, recordkeeping, release reporting and corrective action, fee assessment, and other requirements associated with such tanks, as more fully described in this subchapter.

(3) The requirements and provisions in this subchapter shall apply equally to all owners and operators of regulated aboveground storage tanks, including individuals, trusts, firms, joint-stock companies, corporations, governmental corporations, partnerships, associations (including non-profit and charity organizations), states, municipalities, commissions, political subdivisions of a state, interstate bodies, consortiums, joint ventures, commercial and non-commercial entities, and the United States Government (including all of its departments), except as otherwise provided in this subchapter.

(4) The following types of aboveground tanks shall be subject to the regulations in this subchapter if they meet the general qualifications for an aboveground storage tank in paragraph (1) of this subsection:

(A) compartmental tanks, when at least one of the compartments is used to store petroleum products; and

(B) dual-use or multiple-use tanks which alternately store two or more substances, when at least one of the stored substances is a petroleum product.

(5) If a storage tank containing a petroleum product technically meets the definitions of both an aboveground storage tank and an underground storage tank under this chapter, then the tank will be considered an underground storage tank, and must conform with all applicable requirements for underground storage tanks in this chapter.

(6) Consistent with the statutory exemption for heating oil tanks in §334.123(a)(2) of this title (relating to Statutory Exemptions for ASTs), an aboveground storage tank storing a petroleum product (such as kerosene or diesel) which is primarily used as a heating oil substitute for heating purposes on the premises where stored, and which is secondarily used as a motor fuel for the operation of internal combustion engines, shall be exempt from the regulations of this subchapter.

**§334.122. Definitions for ASTs.**

(a) Except as provided in subsection (b) of this section, the words and terms used in this subchapter shall have the meanings prescribed in §334.2 of this title (relating to Definitions), unless the context clearly indicates otherwise.

(b) The following words and terms, as used in this subchapter only, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Aboveground storage tank (or AST) - A nonvehicular device (including any associated piping) that is made of nonearthen materials; located on or above the surface of the ground, or on or above the surface of the floor of a structure below ground, such as a mineworking, basement, or vault; and designed to contain an accumulation of petroleum products.

(2) Appropriate district office - The commission's district field office which has jurisdiction for conducting authorized commission regulatory activities in the area where a particular aboveground storage tank is located.

(3) Associated piping - All underground pipes or aboveground pipes (including related valves, elbows, joints, flanges, connectors, and other fittings) which are directly associated with an aboveground tank storing petroleum products, which are located at the aboveground storage tank facility, and through which petroleum products flow or in which petroleum products are contained or stored.

(4) Bulk facility - A facility, including pipeline terminals, refinery terminals, rail and barge terminals, and associated underground and aboveground tanks, connected or separate, from which petroleum products are withdrawn from bulk and delivered into a cargo tank or barge used to transport those products.

(5) Electric generating facility - A plant or facility where on-site equipment is used to generate electrical power on a continuous or regular basis. This term does not include emergency generators, as defined in §334.2 of this title (relating to Definitions).

(6) Facility - The site, tract, or other defined area where one or more aboveground storage tanks are located, and which includes all adjoining contiguous land and associated improvements.

(7) Facility owner - Any person who holds legal possession or ownership of a total or partial interest in an aboveground storage tank facility. (The "facility owner" and the "owner" associated with an aboveground storage tank may be the same person or may be different persons, depending on the specific arrangements at the facility.)

(8) Nonearthen materials - Man-made materials designed to provide structural support and containment, such as concrete, steel, or plastic.

(9) Nonvehicular device - A fixed, stationary, or moveable storage vessel which is not affixed or mounted to any self-propelled, towable, or pushable vehicle (e.g., wagon, truck, trailer, railcar, aircraft, boat, or barge).

(10) Operator - Any person in control of, or having responsibility for, the daily operation of an aboveground storage tank.

(11) Owner - Any person who holds legal possession or ownership of a total or partial interest in an aboveground storage tank. For the purposes of this subchapter, where the actual ownership of an aboveground storage tank is either uncertain, unknown, or in dispute, the fee simple owner of the surface estate where the tank is located shall be considered the tank owner, unless the owner of the surface estate can demonstrate by appropriate documentation (deed reservation, invoice, bill of sale, etc.) or by other legally-acceptable means that the aboveground storage tank is owned by others. "Owner" does not include a person who holds an interest in an aboveground storage tank solely for financial security purposes unless, through foreclosure or other related actions, the holder of such security interest has taken legal possession of the tank.

(12) Petroleum product - A petroleum substance obtained from distilling and processing crude oil that is liquid at standard conditions of temperature and pressure, and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including but not necessarily limited to motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing.

(13) Release - Any spilling including overfills, leaking, emitting, discharging, escaping, leaching, or disposing from an aboveground storage tank into groundwater or surface water, or into subsurface or other surrounding soils.

(14) Retail service station - A facility where flammable liquids used as motor fuels are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles and where such dispensing is an act of retail sale.

(15) Tank - An aboveground storage tank.

**§334.123. Statutory Exemptions for ASTs.**

(a) The following aboveground storage tanks are exempt from regulation under this subchapter, as provided in the Texas Water Code, §26.344:

- (1) a farm or residential tank with a capacity of 1,100 gallons or less used for storing motor fuel for noncommercial purposes;
- (2) a tank used for storing heating oil for consumptive use on the premises where stored;
- (3) a septic tank;
- (4) a surface impoundment, pit, pond, or lagoon;
- (5) a stormwater or wastewater collection system;
- (6) a flow-through process tank;
- (7) a tank, liquid trap, gathering line, or other facility used in connection with an activity associated with the exploration, development, or production of oil, gas, or geothermal resources, or any other activity regulated by the Railroad Commission of Texas pursuant to the Natural Resources Code, §91.101;
- (8) a tank located on or above the surface of the floor of an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the sole or principal substance in the tank is a hazardous substance; and
- (9) a tank that is located at or is part of a petrochemical plant, a petroleum refinery, an electric generating facility, or a bulk facility.

(b) The following pipeline facilities are exempt from regulation under this subchapter, as provided in Texas Water Code, §26.344;

(1) an interstate pipeline facility, including gathering lines and any aboveground storage tank connected to such facility, if the pipeline facility is regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968 (49 United States Code §1671, et seq.); or

(B) the Hazardous Liquid Pipeline Safety Act of 1979 (49 United States Code §2001, et seq.).

(2) an intrastate pipeline facility or any aboveground storage tank connected to such a facility, if the pipeline facility is regulated under one of the following state laws:

(A) the Natural Resources Code, Chapter 111;

(B) the Natural Resources Code, Chapter 117; or

(C) Texas Civil Statutes, Article 6053-1 and 6053-2.

**§334.124. Commission Exclusions for ASTs.**

(a) Except as provided in subsection (b) of this section, the following aboveground storage tanks are excluded from regulation under this subchapter by commission directive:

(1) any tank with a capacity of 1,100 gallons or less;

(2) any emergency spill protection or emergency overflow containment tank, including any sump or secondary containment system, which is used solely for the temporary storage or containment of petroleum products resulting from a leak, spill, overflow, or other unplanned release of petroleum products from any source, and where the petroleum products are routinely removed within 48 hours of the discovery of the release, provided that such tank shall be inspected for a release no less than once every month;

(3) any tank that contains petroleum products at such dilute concentrations that:

(A) the mixture is not capable of being used as a fuel for the propulsion of a motor vehicle or aircraft; and

(B) any release would not pose any significant threat to human health and safety or the environment;

(4) a transformer or other electrical equipment that is used in the transmission of electricity.

(b) Notwithstanding the exemptions in subsection (a) of this section, any aboveground storage tank containing petroleum products located at a retail service station is subject to the construction notification requirements of §334.126 of this title (relating to Installation Notification for AST's).

**§334.125. General Prohibitions and Requirements for ASTs.**

(a) Delivery prohibition.

(1) Except as provided in paragraph (2) of this subsection, on or after the effective date of this subchapter, no person shall deposit or have deposited any petroleum products into an aboveground storage tank unless such tank is registered with the commission in accordance with §334.127 of this title (relating to Registration for ASTs). Prior to the deposit of any petroleum products into an aboveground storage tank, the owner or operator shall provide evidence of registration as necessary to comply with the provisions of this paragraph.

(2) The prohibited delivery of petroleum products shall not be applicable to the initial deposit of petroleum products into a new or replacement aboveground storage tank, or to any subsequent deposits occurring within 30 days of the first deposit.

(b) Installation notification. No person shall perform any installation or replacement of an aboveground storage tank unless and until the commission has been provided prior notification of such activity in accordance with §334.126 of this title (relating to Installation Notification for ASTs).

(c) Registration. On or after March 1, 1990, any person who owns or operates an aboveground storage tank which contains or will contain petroleum products must register the tank with the commission in accordance with §334.127 of this title (relating to Registration for ASTs), except for:

(1) aboveground storage tanks specifically exempted from regulation under §334.123 of this title (relating to Statutory Exemptions for ASTs); and

(2) aboveground storage tanks specifically excluded from regulation under §334.124 of this title (relating to Commission Exclusions for ASTs).

**§334.126. Installation Notification for ASTs.**

(a) Except as provided in subsection (b) of this section, on or after the effective date of this subchapter, any person who intends to install a new or replacement aboveground storage tank shall comply with the notification requirements of this section prior to initiating such activity.

(1) Installation notifications shall be submitted to the executive director at least 30 days prior to initiating the activity.

(A) The notification may be provided either to the commission's central office in Austin or to the commission's appropriate district office. The official date of notification shall be the date on which the notification is first received in a commission office.

(B) Notification may be provided by the owner or operator, an authorized agent or representative of the owner or operator, or the contractor or consultant retained for the activity. Notifications filed by unauthorized persons shall be null and void.

(C) Notifications shall be submitted on the commission's authorized form. The form shall be filled out as completely as possible. Upon completion, the form shall be dated and signed by the owner or operator (or designated representative) and shall be filed in accordance with this paragraph.

(D) When appropriate, installation notifications for aboveground storage tanks (as required under this section) may be filed together with construction notifications for underground storage tank activities at the same facility (as required by §334.6 of this title (relating to Construction Notification)), provided that complete and accurate explanation of the activities is included.

(E) Between 24 and 72 hours prior to the scheduled time of initiation of the installation, the owner or operator (or designated representative) shall contact the commission's appropriate district office to confirm the time of the initiation of the installation activities.

(F) The requirements and procedures for rescheduling, waiver requests, and expiration as related to installation notifications for aboveground storage tanks shall be in conformance with

the procedures for construction notifications applicable to underground storage tanks in §334.6(b)(3)-(5) of this title (relating to Construction Notification).

(2) When requested by the executive director, any person who intends to install a new or replacement aboveground storage tank shall also submit additional supporting information to assure that the activity is in compliance with applicable statutes and regulations.

(3) In addition to the installation notification requirements of this section, the owner or operator of a proposed aboveground storage tank that is to be located in the designated recharge zone or transition zone of the Edwards Aquifer shall also secure the requisite approval from the executive director prior to initiating any installation or replacement activities, as prescribed in Chapter 313 of this title (relating to Edwards Aquifer).

(4) When an existing underground storage tank is to be removed from the ground and is to be subsequently converted to an aboveground storage tank, the owner or operator must comply with the applicable technical requirements under §334.55 of this title (relating to Permanent Removal from Service) and with the notification requirements of §334.6 and §334.126 of this title (relating to Construction Notification and Installation Notification for ASTs).

(b) The following aboveground storage tanks shall not be subject to the installation notification requirements of this section:

(1) aboveground storage tanks which are statutorily exempt from regulation under §334.123 of this title (relating to Statutory Exemptions for ASTs);

(2) aboveground storage tanks which are excluded from regulation by commission directive under §334.124 of this title (relating to Commission Exclusions for ASTs);

(3) movable or mobile aboveground storage tanks (e.g., skid tanks) which are moved from one location to another on a regular basis, which are not permanently part of any particular facility, and which are otherwise in compliance with the provisions of §334.127(f) of this title (relating to Registration for ASTs); except that any movable or mobile aboveground storage tanks proposed for installation or placement at a retail service station shall remain subject to the installation notification requirements of this section.

#### **§334.127. Registration for ASTs.**

(a) General provisions.

(1) All aboveground storage tanks in existence on or after September 1, 1989, shall be registered with the commission on forms supplied by or approved by the executive director, except for those tanks which:

(A) are statutorily exempt from regulation under §334.123 of this title (relating to Statutory Exemptions for ASTs); or

(B) are excluded from regulation by commission directive under §334.124 of this title (relating to Commission Exclusions for ASTs).

(2) The owner of an aboveground storage tank shall be responsible for compliance with the tank registration requirements of this section. An owner may designate an authorized representative to complete and submit the required registration information. However, the owner shall be held responsible for compliance with the provisions of this section by such representatives.

(3) All aboveground storage tanks subject to the registration requirements of this section shall also be subject to the annual facility fee provisions in §334.128 of this title (relating to Annual Facility Fees for ASTs), except where specifically exempted from such fee provisions. The failure by a tank owner to properly register any tanks shall not exempt the owner from such fee assessment and payment provisions.

(b) Existing tanks. Any person who owns an aboveground storage tank subject to the provisions of this section that was in existence on September 1, 1989, shall register such tank with the commission not later than March 1, 1990, on forms supplied by or approved by the executive director.

(c) New or replacement tanks. Any person who owns a new or replacement aboveground storage tank subject to the provisions of this section that is placed into service on or after September 1, 1989, must register the tank with the commission on forms supplied by or approved by the executive director no later than March 1, 1990, or within 30 days from the date any petroleum product is placed into the tank, whichever is later.

(d) Changes or additional information. An owner of an aboveground storage tank subject to the provisions of this section shall provide written notice to the executive director of any changes or additional information concerning the status of any regulated tanks, including, but not necessarily limited to, information regarding the operational status, condition, substance stored, ownership, location of records, and number of tanks. Such notice shall be submitted on a form supplied by or approved by the executive director. Such form shall be properly completed and signed, and shall include the commission's unique facility identification number. Notice of any change or additional information shall be filed with the executive director within 30 days of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition, as applicable.

(e) Registration form for aboveground storage tanks.

(1) Any tank owner required to submit tank registration information under subsections (a)-(d) of this section shall provide all the required information on a form supplied by or approved by the executive director for each regulated tank owned.

(2) The tank registration form shall be filled out as completely and accurately as possible. Upon completion, the form shall be dated and signed by the owner or the owner's designated representative, and shall be filed with the executive director within the time frames specified in this section.

(3) All tank owners required to submit tank registration information under subsections (a)-(d) of this section shall provide the registration information for all aboveground storage tanks located at a particular facility on the same registration form.



(4) Tank owners who own tanks located at more than one facility shall complete and file a separate registration form for each facility.

(5) If additional documents are submitted with new or revised registration data, the specific facility identification information (including the facility identification number, if known) shall be conspicuously indicated on each document, and all such documents shall be securely attached to and filed with the registration form.

(f) Registration requirements for movable aboveground storage tanks. Movable or mobile aboveground tanks which are regularly used to store petroleum products (e.g., skid tanks) shall also be registered by the owner in accordance with the provisions of this section. When such tanks are intended to be moved from one location to another on a regular basis and are not permanently part of any particular facility, then an owner may register the tanks in accordance with the following procedures.

(1) For the purposes of completing the tank registration form, the owner may identify the "facility location" for such movable tanks as the owner's principal business address or location.

(2) The owner shall continuously maintain complete and accurate records of the specific location, operational status, condition, and type of petroleum products stored at the owner's principal business address or location. At any given time, the owner's records shall include the required tank information for at least the preceding five years, except that records for any period prior to the effective date of this subchapter shall not be required. Such records shall be readily accessible and available for inspection upon request by commission personnel.

(3) Any movable or mobile tank which is registered at the owner's business address or location, rather than at the actual facility location, shall be permanently and legibly labeled with the executive director's designated identification number for such tank by painting, decals, tags, or other permanent identification method.

(g) Inadequate information. When any of the required tank registration information submitted to the commission is determined to be inaccurate, unclear, illegible, incomplete, or otherwise inadequate, the executive director may require the owner to submit additional information. An owner shall be required to submit any such additional information within 30 days of receipt of such request.

(h) Registration requirements for ASTs for reimbursement. In order to be eligible for reimbursement of any corrective action expenses, the eligibility requirements relating to registration, as provided in §334.310 of this title (relating to Requirements for Eligibility) must be met.

Adopted October 11, 1995

Effective November 8, 1995

#### **§334.128. Annual Facility Fees for ASTs.**

(a) Fee assessments.

(1) Except as provided in subsection (e) of this section, an annual facility fee of \$25 shall be assessed by the commission for each aboveground storage tank subject to the registration provisions of §334.127 of this title (relating to Registration for ASTs).

(2) All annual facility fees shall be billed to, and shall be payable by, the owner of the aboveground storage tank.

(3) Payment of annual facility fees is due no later than 30 days after the date the executive director mails a statement of the assessment to the tank owner.

(4) Annual facility fees must be paid by check, certified check, or money order made payable to the "Texas Natural Resource Conservation Commission." Payments must be mailed to the address specified in the billing statement.

(b) Billing schedule.

(1) The executive director shall establish a schedule for the billing of annual facility fees.

(2) Regardless of the actual billing date, the total amount of annual facility fees billed to and payable by an owner shall be based on the total number of regulated aboveground storage tanks in place on or after the first day of each fiscal year (September 1).

(c) Failure to make payment.

(1) Annual facility fees must be paid at the time and in the manner and amount provided by this section.

(2) The executive director shall impose interest and penalties on owners who fail to make payment of the annual facility fees assessed under this section when due in accordance with Chapter 12 of this title (relating to Payment of Fees).

(d) Disposition of fees, interest, and penalties. As required by the Texas Water Code, §26.358(g), the commission shall deposit all annual facility fees collected, together with all interest and penalties collected for late payment, in the state treasury to the credit of the storage tank fund.

(e) Exception. An annual facility fee shall not be assessed for an aboveground storage tank which is owned by a common carrier railroad, as provided in the Texas Water Code, §26.344(g).

Adopted January 22, 1997

Effective February 14, 1997

**§334.129. Release Reporting and Corrective Action for ASTs.**

(a) An owner or operator of an aboveground storage tank shall comply with the same release reporting, investigation, and corrective action requirements and procedures applicable to underground storage tanks, as prescribed in Subchapter D of this chapter (relating to Release Reporting and Corrective Action),

whenever a suspected or confirmed release of a petroleum product from an aboveground storage tank has occurred.

(b) An owner or operator of an aboveground tank which stores other petroleum substances or hazardous substances which are not petroleum products shall comply with the release reporting, investigation, and corrective action requirements prescribed in the Texas Water Code, Chapter 26, Subchapter G.

**§334.130. Reporting and Recordkeeping for ASTs.**

(a) Reporting. Owners and operators of aboveground storage tanks shall assure that all reporting and filing requirements in this subchapter are met, including the following (as applicable):

(1) installation notification in accordance with §334.126 of this title (relating to Installation Notification for ASTs);

(2) application for approval of any proposed aboveground storage tank in the Edwards Aquifer recharge or transition zones, in accordance with §334.126(3) of the this title (relating to Installation Notification for ASTs) and Chapter 313 of this title (relating to Edwards Aquifer);

(3) registration of aboveground storage tanks and changes in information, in accordance with §334.127 of this title (relating to Registration for ASTs);

(4) payment of annual facility fees for aboveground storage tanks, in accordance with §334.128 of this title (relating to Annual Facility Fees for ASTs);

(5) all reports, plans, and certifications related to actions taken in response to suspected and confirmed releases of petroleum products, in accordance with §334.129 of this title (relating to Release Reporting and Corrective Action for ASTs) and subchapter D of this chapter (relating to Release Reporting and Corrective Action);

(6) any other reports, filings, notifications, or other submittals required by this subchapter, or otherwise required by the executive director or the commission to demonstrate compliance with the provisions of this subchapter.

(b) Recordkeeping.

(1) General recordkeeping requirements.

(A) Except as provided in subparagraph (B) of this paragraph, owners and operators of aboveground storage tanks shall comply with the same general recordkeeping requirements applicable to underground storage tanks, as prescribed in §334.10(b)(1) of this title (relating to Reporting and Recordkeeping).

(B) Owners of movable or mobile aboveground storage tanks (e.g., skid tanks) may maintain the records for such tanks in accordance with the provisions of §334.127(f)(2) of this title (relating to Registration for ASTs).

(2) Required records and documents. Owners and operators of aboveground storage tanks shall assure that legible copies of all original and amended tank registration documents, as prescribed in §334.127 of this title (relating to Registration for ASTs), shall be maintained for the operational life of the aboveground storage tank.

**§334.131. Enforcement for ASTs.**

(a) Further action. If an investigation, review, or inspection by commission personnel does not sufficiently demonstrate that an owner or operator of an aboveground storage tank is in compliance with the applicable requirements of this subchapter, the executive director may take one or more of the following actions.

(1) The executive director may require the owner or operator to submit additional documentation and data to adequately demonstrate compliance with the applicable provisions of this subchapter.

(2) The executive director may require the owner to conduct additional activities to achieve compliance with this subchapter, including monitoring and testing for releases and corrective action.

(3) The executive director may initiate formal enforcement action and may seek administrative penalties, as prescribed under Chapter 337 of this title (relating to Enforcement) and under the Texas Water Code, Chapter 26.

(b) Commission orders. The commission may issue orders to enforce the provisions of this subchapter in accordance with the procedures applicable to orders issued under the Texas Water Code, §26.019.

**§334.132. Other General Provisions for ASTs.**

(a) Other regulations. Compliance with the provisions of this subchapter by an owner or operator of an aboveground storage tank shall not relieve such owner or operator from the responsibility of compliance with any other laws and regulations directly and/or indirectly affecting such tanks and the stored petroleum products, including, but not necessarily limited to, all applicable regulations legally promulgated by the United States Environmental Protection Agency, United States Occupational Safety and Health Administration, United States Department of Transportation, United States Nuclear Regulatory Commission, United States Department of Energy, Texas Air Control Board, Texas Department of Health, State Board of Insurance (including State Fire Marshal), Railroad Commission of Texas, Texas Department of Agriculture, State Comptroller, Texas Department of Public Safety, Texas Water Commission and any other federal, state, and local governmental agencies or entities having appropriate jurisdiction.

(b) Responsibilities of owners and operators. The owners and operators of aboveground storage tanks subject to the provisions of this subchapter shall be responsible for ensuring compliance with all applicable provisions of this subchapter. Owners and operators are responsible for any violations or noncompliant activities resulting from the actions or inactions by any contractor, operator, or other person who is employed or otherwise engaged by an aboveground storage tank owner or operator to be principally in charge of any activities or procedures required under this subchapter.

(c) Inspections, monitoring, and testing.

(1) For the purposes of developing or assisting in the development of a regulation, conducting a study, or enforcing this subchapter, an owner or operator of an aboveground storage tank, on the request of the commission shall:

(A) furnish information related to the tank, including tank equipment and contents;  
and

(B) permit a designated agent or employee of the commission at all reasonable times to have access to, and to copy all records relating to the tank.

(2) For the purposes of developing or assisting in the development of a regulation, conducting a study, or enforcing this subchapter, the commission, its designated agent, or employee may:

(A) enter at reasonable times an establishment or place in which an aboveground storage tank is located;

(B) inspect and obtain samples of a petroleum substance contained in the tank from any person; and

(C) conduct monitoring or testing of the tank, associated equipment, contents, or surrounding soils, air, surface water, or groundwater.

(3) The commission may order an owner or operator of an aboveground storage tank to conduct monitoring and testing if the commission finds that there is reasonable cause to believe that a release has occurred in the area in which the aboveground storage tank is located.

(4) Each inspection made under this section must be begun and completed with reasonable promptness. Before a designated agent or employee of the commission enters private property to carry out a function authorized under this section, the agent or employee must give reasonable notice and exhibit proper identification to the manager or owner of the property or to another appropriate person. The commission's designated agent or employee must observe the regulations of the establishment being inspected, including regulations regarding safety, internal security, and fire protection.

(5) Pursuant to the provisions of Texas Civil Statutes, Article 9201, §3 (as amended by Senate Bill 698, 71st Legislature, 1989), the commission shall have concurrent jurisdiction with the State Board of Insurance on inspection of initial installation and other administrative supervision of certain specified aboveground storage tanks at retail service stations. Primary authority for inspection of initial installation of such tanks shall be in the Texas Water Commission. The commission shall report all violations of Texas Civil Statutes, Article 9201, §3, in regard to aboveground storage tanks to the state fire marshal for enforcement proceedings.